Sealift Maritime, Inc. *and* Inlandboatmen's Union of the Pacific, Marine Division, International Longshoremen's and Warehousemen's Union, Petitioner. Case 21-RC-17027

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBER JENKINS AND HUNTER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Jack L. Schlumberger on July 15, 1982. After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 21 transferred the case to the Board for decision. Thereafter, the Petitioner and the Intervenor[1] filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. Sealift Maritime, Inc., the Employer, is a California corporation engaged in the business of transporting bunker fuel in the Los Angeles harbor. During the fiscal year immediately preceding the hearing, it performed services valued in excess of $50,000 for customers located within the State of California, which customers purchased and received goods valued in excess of $50,000, directly from suppliers located outside the State of California.

2. The parties stipulated, and we find, that Inlandboatmen's Union of the Pacific, Marine Division, International Longshoremen's and Warehousemen's Union, the Petitioner, has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act. However, the Petitioner contends that the Intervenor, International Organization of Masters, Mates and Pilots, Pacific Maritime Region, AFL-CIO, is not a labor organization within the meaning of Section 2(5) of the Act, as amended. However, the record testimony shows that the Intervenor is an organization in which employees may participate and join, and which exists for the purpose of bargaining on behalf of the employees with employers over wages, hours, and other terms and conditions of employment. We therefore find that it is a labor organization within the meaning of Section 2(5) of the Act. Although supervisors are also admitted to membership in the Petitioner, this does not alter the Petitioner's status as a labor organization.[2] *Graham Transportation Company*, 124 NLRB 960 (1959).

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of all employees of the Employer working on boats and oil barges but excluding office clerical employees, guards, and supervisors as defined in the Act. The Intervenor takes the position that the employees of the Employer are in a unit now covered by a collective-bargaining agreement between it and the Employer, effective from May 1, 1982, through April 30, 1985, and therefore the petition filed June 4, 1982, should be dismissed. The Employer is in agreement with the Intervenor.

The bargaining relationship between the Employer and the Intervenor dates back to February 1, 1980, when, pursuant to a compliance agreement, they became parties to a collective-bargaining agreement extending through May 31, 1982. During the term of this agreement, the Employer became insolvent and thereafter filed for reorganization under chapter 11 of the Bankruptcy Reform Act of 1978, with the company assuming the role of "debtor-in-possession." See 11 U.S.C. Sections 1106, 1107(a), and 1108.[3] Shortly after filing for reorganization and becoming a debtor-in-possession, the Employer assumed the preexisting collective-bargaining agreement, with the bankruptcy court's approval. Thereafter, on May 26, 1982, the parties executed a new agreement which modified the previous contract, effective May 1, 1982, through April 30, 1985.[4] The Employer's authorization for entering into the new agreement is found in 11 U.S.C. Section 1108, which states that, unless the

[1] International Organization of Masters, Mates and Pilots, Pacific Maritime Region, AFL-CIO, filed as the Intervenor.

[2] The Petitioner contends that the Intervenor should be disqualified from representing the employees herein because there exists a clear and present danger of a conflict of interest between the Intervenor and the employees, citing *Sierra Vista Hospital, Inc.*, 241 NLRB 631 (1979). However, as the Petitioner has presented no substantial evidence which supports this allegation, we find it to be lacking in merit.

[3] As debtor-in-possession the company, subject to such limitations or conditions as the court may prescribe, has all the rights of a trustee under chapter 11, including the right to operate the debtor's business under sec. 1108.

[4] The contract provides, *inter alia*, for an increase in wages over a 3-year period for masters, chief mates, mates, deckhands, and tank officers; for an increase in subsistence pay for other employees; for an increase in reimbursement for employees when a vessel is based at a temporary terminal; and for two more paid holidays.

court orders otherwise, the trustee may operate the debtor's business, and 11 U.S.C. Section 1107(a) which states that the debtor-in-possession has the powers of the trustee unless limited by the court. Therefore, by virtue of these two sections the Employer had the right and the duty to continue operation of the company without seeking the court's approval of each business decision. The collective-bargaining contract, which was a slightly modified version of a contract already sanctioned by court, was entered into in the ordinary course of business under 11 U.S.C. Section 1108.

On June 4, 1982, the Petitioner filed the instant petition. The Petitioner contends that the May 1982 collective-bargaining agreement between the Employer and the Intervenor is not a bar to its petition because the contract became effective after the Employer filed for bankruptcy, and it has neither been expressly approved nor rejected by a Federal bankruptcy judge.

However, we agree with the position of the Employer and the Intervenor that, because the Employer had achieved the status of debtor-in-possession by the time the contract was signed, it had the authority to continue its operations in the ordinary course of business and thus was not obligated to seek the approval of the bankruptcy court, as set forth above.

We find the facts here to be similar to those in *Marcalus Manufacturing Co., Inc.*, 86 NLRB 315 (1949). In that case, the employer entered into a collective-bargaining agreement 9 months prior to filing for bankruptcy under the Bankruptcy Act of 1898, which was then in effect. At the time of the filing, the labor contract had approximately 15 more months until its expiration date. During the 15-month period, another union filed a representation petition, claiming that the current contract was no bar because it had not been affirmed by the bankruptcy trustee who, under the 1898 Act, had the duty to operate the employer's business during reorganization. The record showed that, while the trustee had not affirmed the contract, he had expressly refused to disavow it, and had in fact complied with its terms "to the extent that he has found it legally possible to do so within the limitations of the reorganization procedure." *Id.* at 316. Therefore, the Board found that a contract existed which was sufficient to bar the representation petition.

The situation in the instant case differs in that under the Bankruptcy Reform Act of 1978 it is not the trustee, but the employer, as debtor-in-possession, who controls the business. 11 U.S.C. Section 1107(a) gives the debtor-in-possession all the powers of the trustee. Thus, since in *Marcalus* the trustee's mere refusal to disavow the contract was sufficient to bar a rival petition, the execution of a new collective-bargaining agreement by the Employer as debtor-in-possession similarly will bar a petition unless and until the contract is rejected by the bankruptcy court.

For these reasons, we find that the collective-bargaining agreement between the Employer and the Intervenor is an effective bar to the representation petition, and therefore we shall dismiss the petition.

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.